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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/852,209

05/10/2001

Ulf Eriksson

1064/44740CP

3846

23911

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06/07/2005

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EXAMINER

SPECTOR, LORRAINE

ART UNIT

PAPER NUMBER

1647

DATE MAILED: 06/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



## Office Action Summary

**Application No.**

09/852,209

**Applicant(s)**

ERIKSSON ET AL.

**Examiner**

Lorraine Spector, Ph.D.

**Art Unit**

1647

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 36,46-49,59 and 60 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 36, 46-49,59 and 60 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.



### **DETAILED ACTION**

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

An action on the merits follows.

Claims 36, 47 and 49, previously indicated as being allowable, are now subject to rejection under 35 U.S.C. §102(e).

The new drawings are acknowledged.

The rejection of claims under 35 U.S.C. §112, first paragraph is withdrawn in view of applicants amendments.

The Examiner has re-evaluated the priority situation in this application. It is noted that the application filed 12/3/1998 had only an incomplete human clone, starting at residue 29 of SEQ ID NO: 3, and did not have the entirety of SEQ ID NO: 2. The application filed 12/18/1998 has the complete human sequence. The issue of when the truncated form was first disclosed is not pertinent, as none of the claims are limited to such. Accordingly, priority is currently set at 12/18/1998, as one could not have expressed a polynucleotide sequence of SEQ ID NO: 2 before obtaining such.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.



Art Unit: 1647

Claims 36, 46-49 and 59-60 are rejected under 35 U.S.C. 102(e) as being anticipated by Gao et al., U.S. PATENT NO. 6,528,050.

Gao et al. discloses both full-length and truncated ZVEGF3. Methods of using the protein consistent with those claimed herein are disclosed. In particular, claim 46 corresponds to claim 1 of Gao et al. Gao discloses activation of the PDGF- $\alpha$  receptor and column 5, and such activation is further inherent to the method of Gao's claim 1. Also see column 38. Angiogenesis is also disclosed at column 38 as being inducible using the protein, including in the context of wound healing, which is the subject of Gao's claim 8, which anticipates claim 36. With respect to claims 47, mitogenesis is defined as "the induction of mitosis", and thus is anticipated by Gao's claim 1. With respect to claim 49, a compound and its properties are inseparable, such that the methods disclosed by Gao et al. inherently meet the limitations of the claim, especially as Gao et al. disclose at column 5 that the protein activates the PDGF alpha receptor. Accordingly, the claims are anticipated by Gao et al.

Gao et al., U.S. Patent Number 6,528,050, disclosed the full-length and truncated forms of human PDGF-C, which they named ZVEGF3, in their earliest priority application, having filing date 12/7/1998. At pages 68-69 of that document, ZVEGF3 is disclosed as an angiogenic agent to be used in wound healing.

The declaration filed on 2/4/2005 under 37 CFR 1.131 has been considered but is ineffective to overcome the Gao reference.

The Gao reference is a U.S. patent or U.S. patent application publication of a pending or patented application that claims the rejected invention. An affidavit or declaration is inappropriate under 37 CFR 1.131(a) when the reference is claiming the same patentable invention, see MPEP § 2306. If the reference and this application are not commonly owned, the reference can only be overcome by establishing priority of invention through interference proceedings. See MPEP Chapter 2300 for information on initiating interference proceedings. If the reference and this application are commonly owned, the reference may be disqualified as prior art by an affidavit or declaration under 37 CFR 1.130. See MPEP § 718.



Art Unit: 1647

***Conclusion***

No claim is allowed.

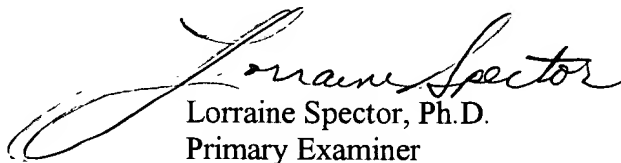
Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Lorraine M. Spector. Dr. Spector can normally be reached Monday through Friday, 9:00 A.M. to 3:00 P.M. at telephone number 571-272-0893.

If attempts to reach the Examiner by telephone are unsuccessful, please contact the Examiner's supervisor, Ms. Brenda Brumback, at telephone number 571-272-0961.

Certain papers related to this application may be submitted to Technology Center 1600 by facsimile transmission. The faxing of such papers must conform with the notices published in the Official Gazette, 1156 OG 61 (November 16, 1993) and 1157 OG 94 (December 28, 1993) (see 37 C.F.R. § 1.6(d)). NOTE: If Applicant does submit a paper by fax, the original signed copy should be retained by applicant or applicant's representative. NO DUPLICATE COPIES SHOULD BE SUBMITTED so as to avoid the processing of duplicate papers in the Office.

Official papers filed by fax should be directed to 571-273-8300. Faxed draft or informal communications with the examiner should be directed to **571-273-0893**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Lorraine Spector, Ph.D.  
Primary Examiner